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Docket Number _____

SUPREME COURT OF THE UNITED STATES

DALE PARKER, Petitioner, vs. UNITED STATES OF AMERICA, Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals, Tenth Circuit's decision to affirm Petitioner's conviction is in conflict with decisions from other United States Courts of Appeal on this issue.

2. Whether the United States Court of Appeals, Tenth Circuit's decision in affirming the district court's ruling that Petitioner's prosecution was not barred by the Second Amendment is in conflict with decisions from other United States Courts of Appeal on this issue, or has so far departed from this Court's original holdings in United States v. Miller, 307 U.S. 174 (1939) and Lewis v. United States, 445 U.S. 55 (1980), as to call for an exercise of this Court's supervisory power.

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CITATIONS OF OPINIONS BELOW

The Order and Judgment of the United States Court of Appeals for the Tenth Circuit below was published. It was entered on March 24, 2004, under United States v. Parker, docket #03-4119, found at 362 F.3d 1279 (10th Cir., 2004). A copy of this decision is attached in the appendix hereto.

The Order and Judgment of the United States District Court for the District of Utah, Central Division is unreported. It was entered on February 13, 2003, under United States v. Parker, docket #2:03 CR 139 TC. A copy of this decision is attached in the appendix hereto, in the transcript of the oral ruling.

Petitioner's appeal of the Magistrate's Order was heard by the District Court of Utah. This decision was entered May 21, 2003, under United States v. Parker and is not reported. A copy of this decision is attached in the appendix hereto.

STATEMENT OF JURISDICTION

The jurisdiction of the United States Supreme Court is defined in Article III of the Constitution of the United States. The Tenth

Circuit Court of Appeals entered its Order and Judgment denying Petitioner's appeal and affirming his conviction on March 24, 2004. No petition for a rehearing was made. The United States Supreme Court has jurisdiction to review this order and judgment of the Court of Appeals pursuant to 28 U.S.C. §1254.

CONSTITUTIONAL PROVISIONS, TREATISES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

The United States Constitution, Amendment II, provides:

> "A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Utah Code Annotated, §76-10-505, states:

> "(1) Unless otherwise authorized by law, a person may not carry a loaded firearm:
>
> (A) in or on a vehicle;
> (B) on any public street; or
> (C) in a posted prohibited area.
>
> (2) A violation of this section is a Class B misdemeanor."

STATEMENT OF THE CASE

Petitioner was charged in Federal court with one count of carrying a loaded firearm in violation of Utah Code Annotated §76-10-505. He was prosecuted under the Assimilative Crimes Act, 18 U.S.C. §13. Petitioner challenged the prosecution. Petitioner was convicted and sentenced and ordered to pay a $90.00 fine, plus a $10.00 surcharge. Petitioner timely appealed this conviction by the Magistrate to the district court pursuant to 18 U.S.C. §3402 and Federal Rules of Criminal Procedure 58(g)(2)(B). Petitioner claimed at all stages that his prosecution violated the Second Amendment of the United States Constitution.

The district court judge denied his motion to dismiss the prosecution against him (Appendix p. 27-28.) Petitioner appealed to the Tenth Circuit Court of Appeals. His conviction was affirmed. Petitioner did not apply for a rehearing.

The matter was briefed by the parties in the Tenth Circuit Court of Appeals, and the Tenth Circuit entered its Opinion on March 24, 2004, affirming the conviction. (Appendix p. 19-26).

ARGUMENT

POINT I: STANDARD OF REVIEW

Defendant's entire appeal is based upon an analysis of his rights under the United States Constitution. For this reason, he is entitled to de novo consideration of all issues raised in this appeal.

POINT II: SECOND AMENDMENT

The Second Amendment provides:

> A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

There is a division in the circuits as to the proper interpretation of the Second Amendment. As noted in the case of United States v. Emerson, 270 F.3d 203 (5th Cir. 2001), courts and commentators have offered what may be

characterized as three different interpretations of the Second Amendment. The first interpretation is that the Second Amendment does not apply to individuals; rather it recognizes the right of a State to arm a state militia. Some circuits have adopted this view, which may be characterized as the "collective" view of the Second Amendment. Those circuits are the Fourth Circuit in Love v. Pepersack, 47 F.3d 120 (4th Cir. 1995); the Sixth Circuit in Stevens v. United States, 440 F.2d 144 (6th Cir. 1971); the Seventh Circuit in Gillespie v. City of Indianapolis, 185 F.3d 693 (7th Cir. 1999); and the Ninth Circuit in Hickman v. Block, 81 F. 3d 98 (9th Cir. 1996).

Another theoretical approach to the Second Amendment is that it recognizes some limited individual right to bear arms, but that this individual right to bear arms may only be exercised by members of a functioning organized State militia, who bear the arms as part of and actively participating in the organized militia's activities.

Under this model, the "individual" right to keep and bear arms only applies to members of such a militia and then only if the federal or state governments fail to provide the firearms necessary for such militia to function. This is sometimes referred to as the "sophisticated collective rights model," and has been adopted by some circuits, including the First Circuit in Cases v. United States, 131 F.2d 916 (1st Cir. 1942); the Third Circuit in United States v. Rybar, 103 F.3d 273 (3rd Cir. 1996); the Eighth Circuit in United States v. Hale, 978 F.2d 1016 (8th Cir. 1992); the Tenth Circuit in United States v. Oakes, 564 F.2d 384 (10th Cir. 1977) and the Eleventh Circuit in United States v. Wright, 117 F.3d 1265 (11th Cir., 1997).

The third possible approach to the Second Amendment would simply recognize the right of individuals to keep and bear arms, period. Theoretically, there could be reasonable "time and manner" restrictions, just as there are for the exercise of free speech, but otherwise, the right would be unimpeachable. This is the view apparently partially

adopted by the Fifth Circuit Court in U.S. v. Emerson, supra, and now advanced by Defendant, and is the position he seeks to have this Court adopt. This approach is the position subscribed to by numerous academic commentators. (See Emerson decision).

The only case in which the United States Supreme Court has ever directly interpreted the Second Amendment is U.S. v. Miller, 307 U.S. 174 (1939). In that case, a defendant challenged the National Firearms Act in a prosecution for a shotgun having a barrel less than 18 inches in length. This Court in Miller reversed a decision of the district court and "remanded for further proceedings," deciding the case on the basis that a shotgun having a barrel less than 18 inches is not one of the class of "arms" which the Second Amendment prohibits infringement of the right of the people to keep and bear. Defendant here asserts that it is fairly clear the decision in Miller does not limit the Second Amendment right merely to the right of individuals to join official state or federal

militias and/or to bear arms in the context of official militias. This interpretation of Miller was the holding of the circuit court in Emerson, supra.

The circuit court in the Emerson case went on to analyze currently-existing firearms regulations, in the context of the Second Amendment. The Emerson court concluded that "the people," as used in the United States Constitution, including the Second Amendment, refers to individual Americans. (See page 229.) The Emerson court went on to conclude that the phrase "bear arms" refers generally to the carrying of or wearing of arms. The court there found that the phrase "bear arms" does not refer only to the carrying or the wearing of arms by a soldier or a militiaman. (At page 231.) Thus, Emerson holds that the plain meaning of the Second Amendment is that an individual, rather than a collective, has a right to keep arms, not limited to a period of time when the individual is engaged in active military service

or as a member of a select state militia. (Emerson at page 232) The court there found:

> We reject the collective rights and sophisticated collective rights models for interpreting the Second Amendment. We hold, consistent with Miller, that it protects the right of individuals, including those not then actually a member of any militia or engaged in active military service or training, to privately possess and bear their own firearms, such as the pistol involved here, that are suitable as personal individual weapons and are not of the general kind or type excluded by Miller. (at page 260) (emphasis added).

The court in Emerson went on, however, to uphold a prosecution against Emerson for possession of a weapon, while being subject to a domestic violence protective order. The Emerson appellate court found that the predicate domestic violence protective order in place there was sufficient to support the deprivation of Mr. Emerson's rights to bear arms, was akin to a proper "time place and manner"

restriction, and reversed the district court's dismissal of the indictment on Second Amendment grounds.

The United States Supreme Court denied certiorari in the Emerson decision.

These issues were all raised to the Tenth Circuit below. The Tenth Circuit here has soundly rejected the Emerson analysis, and has continued in the "sophisticated collective rights model" interpretation of the Second Amendment it had previously adopted.

Mr. Parker, here, asserts that, under the facts of his case, there is not sufficient basis to warrant deprivation of his Second Amendment rights, and that the deprivation of rights here is unreasonable. Defendant here would agree that reasonable restrictions of the right to bear arms are constitutional. This Court has already held that restricting the right to own short-barreled shotguns is constitutional. This Court has rejected certiorari in a case involving the right of states to restrict gun possession by persons subject to

domestic violence orders. Defendant agrees that restrictions on persons subject to domestic violence orders are constitutional, as a reasonable "time and manner" restriction.

However, Defendant here did not have a short-barreled shotgun. Defendant was not a restricted person in any sense of the word. The analysis here must be different from cases previously decided by this Court, or rejected by this Court for certiorari.

Here, Defendant is accused of committing no crime with any firearm, save its mere possession. The weapon in issue is a six-shot revolver, a handgun. It is a weapon of the type most assuredly contemplated and protected by the Second Amendment. It is a weapon clearly intended solely for personal use, and not a military weapon. Here, it was carried in a private vehicle. It was not brandished nor used to threaten any third party. It was not discharged. Defendant has never been convicted of a felony, or of any crime, save

minor traffic offenses. He has not been found to be mentally ill, nor has he here subjected to a domestic violence order.

There is no rational relationship between the deprivation of Second Amendment rights here, and a legitimate government interest in channeling or restricting those rights. Accordingly, the prosecution against the defendant was unconstitutional.

POINT III. REASONS FOR GRANTING CERTIORARI

Because this case involves an issue of conflict in the circuits over the interpretation of the Second Amendment, and because the opinions of most circuits misinterpret this Court's holding in United States v. Miller, supra, and this is an issue critical to determine the federal constitutional rights of citizens, this Court should grant certiorari.

In United States v. Miller, supra, in 1939, this Court addressed the case of Jack Miller and Frank Layton who were charged with unlawfully transporting a firearm in interstate

commerce without having registered the firearm, and without having in their possession a stamp-affixed written order for the firearm. They were charged in Arkansas with transporting a double barrel 12-gauge shotgun having a barrel less than 18 inches in length. They not had registered the firearm as indicated. They were prosecuted under authority of the "National Firearms Act" adopted June 26, 1934. This Act, among other restrictions, prohibited possession of a shotgun with such a short barrel. There, the defendants alleged that the National Firearms Act offended the Second Amendment. The district court of Arkansas had held that the Act violated the Second Amendment of the Constitution. This Court found that there was no evidence tending to show possession of a shotgun having a barrel of less than 18 inches in length had some reasonable relationship to the preservation or efficiency of a well regulated militia, as contemplated by the Framers, and found that the National Firearms Act, in

restricting this particular weapon, did not offend the Second Amendment to the United States Constitution.

This Court went on to analyze the Second Amendment as follows: the sentiment in existence at the time when the Constitution was adopted, strongly disfavored standing armies. The defense of the country and the defense of the law of the land would be secured through state militias who would be civilians primarily, and soldiers on occasion. (Miller at page 179). This Court went on to note in Miller that militias, at the time of the adoption of the Constitution, would be comprised of all males physically capable of acting in concert for the common defense, and that they would be comprised of "a body of citizens enrolled for military discipline." (Miller at page 179). At the time of the adoption of the Second Amendment, these men who were to comprise militias would be expected to appear bearing arms supplied by themselves and of the kind in common use at the time.

The analysis set forth in Miller would seem to indicate that this Court recognized that the Second Amendment may protect the right of all able-bodied persons in a community to have firearms, of the kind generally held for personal possession and use at the time of the adoption of the Second Amendment, or modern derivations of the same, and that they may have them for the purposes of contributing to the common defense of their homes, neighborhoods, communities and State.

From this simple analysis and holding in Miller, most of the circuits have adopted a very specific analysis that the Second Amendment of the United States Constitution does not protect an individual's right to bear arms. Some circuits now claim that arms may not be held, even in organized militias. The holding of the Fifth Circuit stands in stark contrast to these other holdings.

Petitioner here asserts that many Circuits have taken an overly broad view of the holding in United States v.

Miller, supra, and have taken an over-restrictive interpretation of the Second Amendment.

CONCLUSIONS

This Court should grant certiorari to resolve these issues regarding the Second Amendment.

RESPECTFULLY SUBMITTED this 14 day of June, 2004.

CORPORON & WILLIAMS, P.C.

MARY C. CORPORON
Attorney for Petitioner

APPENDIX

1 of 100 DOCUMENTS

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. DALE PARKER, Defendant-Appellant,

No. 03-4119

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

362 F.3d 1279; 2004 U.S. App. LEXIS 5509

March 24, 2004, Filed

PRIOR HISTORY: [*1] APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH. (D.C. No. 2:03-CR-139-TC).

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant appealed from his conviction in the United States District Court for the District of Utah guilty under the Assimilative Crimes Act (ACA), 18 U.S.C.S. § 13, of carrying a loaded firearm in a vehicle or on a public street, in violation of Utah Code Ann. § 76-10-505. He asserted that his conviction violated the Second and Tenth Amendments to the U.S. Constitution.

OVERVIEW: Defendant was arrested after a random search of his vehicle at the gates of Dugway Proving Ground, as he drove on that federal property to perform civilian contract work. He was charged under the ACA with violating the State law for carrying a loaded weapon, which he would have violated had he been searched outside the military property. Defendant moved to dismiss the charge, claiming the application of the ACA violated his Second Amendment right to bear arms, and the authority to regulate the right to bear arms was reserved to the states under the Tenth Amendment. He appealed his conviction, pursuant to 18 U.S.C.S. § 3402 and Fed. R. Crim. P. 58(g)(2)(B). The court of appeals eventually heard the appeal, and affirmed the conviction. Defendant has presented no evidence that his revolver would come within the category of arms used by a militia, and thus was not entitled to Second Amendment protection. The court rejected the Tenth Amendment claim as inapposite, because the prosecution was in fact enforcing State law.

OUTCOME: The conviction was affirmed as to the Second Amendment claim, and the claim under the Tenth Amendment was dismissed for lack of standing.

CORE TERMS: militia, firearm, bear arms, individual right, well-regulated, regulated, weapon, preservation, violating, arm, gate, reasonable relationship, loaded firearm, gun, military, federal prosecution, federal government, gun control, machine gun, felon, Assimilative Crimes Act, unlawful possession, motion to dismiss, domestic violence, federal criminal, evidence tending, public street, unregistered, gun-control, punishable

LexisNexis (TM) HEADNOTES - Core Concpets:

Criminal Law & Procedure ⟩ Criminal Offenses ⟩ Weapons ⟩ Possession
[HN1] See Utah Code Ann. § 76-10-505.

Military & Veteran Law ⟩ Military Justice ⟩ Assimilation
[HN2] The purpose of the Assimilative Crimes Act (ACA), 18 U.S.C. § 13, is to borrow state law to fill gaps in the federal criminal law that applies on federal enclaves. The ACA provides a method of punishing a crime committed on government reservations in the way and to the extent that it would have been punishable if committed within the surrounding jurisdiction.

Military & Veterans Law ⟩ Military Justice ⟩ Assimilation
[HN3] See 18 U.S.C.S. § 13(a).

Military & Veterans Law ⟩ Military Justice ⟩ Assimilation
Military & Veterans Law ⟩ Military Justice ⟩ Jurisdiction ⟩ Exclusive & Nonexclusive Jurisdiction
[HN4] See 18 U.S.C.S. § 7.

Constitutional Law ⟩ Right to Bear Arms
[HN5] See U.S. Const. amend. II.

Constitutional Law ⟩ Right to Bear Arms Criminal Law & Procedure ⟩ Criminal Offenses ⟩ Weapons ⟩ Possession
[HN6] The Second Amendment does not guarantee an individual the right to keep and transport a firearm where there is no evidence that possession of that firearm was related to the preservation or efficiency of a well-regulated militia.

Constitutional Law ⟩ Right to Bear Arms
[HN7] There is a four-part test a party must satisfy to establish a Second Amendment violation: As a threshold

matter, a party must show that (1) he is part of a state militia; (2) the militia, and his participation therein, is well regulated by the state; (3) guns of the type at issue are used by that militia; and (4) his possession of the gun at issue was reasonably connected to his militia service.

Constitutional Law ⟩ Congressional Duties & Powers ⟩ Reserved Powers

[HN8] The United States Court of Appeals for the Tenth Circuit holds that private plaintiffs do not have standing to bring Tenth Amendment claims when their interests are not aligned with the state's interests.

Constitutional Law ⟩ Congressional Duties & Powers ⟩ Reserved Powers

[HN9] Only a state has standing to press claims aimed at protecting its sovereign powers under the Tenth Amendment.

COUNSEL: Submitted on the Briefs: *

> * After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Mary C. Corporon, Corporon & Williams, P.C., Salt Lake City, Utah, for the defendant-appellant.

Paul M. Warner, United States Attorney, and Diana Hagen, Assistant United States Attorney, Salt Lake City, Utah, for the plaintiff-appellee.

JUDGES: Before KELLY, McWILLIAMS and BRISCOE, Circuit Judges. KELLY, Circuit Judge, concurring.

OPINION BY: BRISCOE

OPINION: BRISCOE, Circuit Judge.

Defendant Dale Parker was found guilty under the Assimilative Crimes Act (ACA), 18 U.S.C. § 13, of carrying a loaded firearm in a vehicle or on a public street, in violation of Utah Code Ann. § 76-10-505 n1 He contends his conviction violates the Second and Tenth Amendments. [*2] We affirm as to Parker's Second Amendment claim, but dismiss his Tenth Amendment claim for lack of standing.

> n1 Utah Code Ann. § 76-10-505 states: [HN1] "(1) Unless otherwise authorized by law, a person may not carry a loaded firearm; (a) in or on a vehicle; (b) on any public street; or (c) in a posted prohibited area. (2) A violation of this section is a class B misdemeanor."

I.

The facts of this case are undisputed. On October 3, 2002, Parker drove his pickup truck onto the Dugway Proving Ground in Utah to perform civilian contract work. The front gate was located inside the Dugway Proving Ground, and warning signs posted at the front gate stated: "Warning U.S. Army boundary. All persons are subject to all regulations. Persons and vehicles are subject to search upon entry into and exit from Dugway Proving grounds and while within the boundary of this military reservation based upon probable cause or military necessity." App. at 8-9. As a result of a stopped at the gate and searched by Specialist

Jessie James Lynch. Lynch found a loaded .38 caliber revolver under the seat6 of Parker's pickup. Parker was detained at the gate and then transported to the military police department where he was interviewed. In Parker's sworn statement, he stated: "I forgot I had my revolver in my truck when I drove on the facility. Had I remembered, I would have declared it at the gate." Id. at 727.

Prior to trial, Parker filed a motion to dismiss the charge, claiming the ACA, as applied to him, violated his Second Amendment right to bear arms and that authority to regulate the right to bear arms is reserved to the states under the Tenth Amendment. The magistrate judge denied Parker's motion to dismiss and he was tried and found guilty by the magistrate. The court ordered Parker to pay a $90 fine and a $10 special assessment fee. Pursuant to 18 U.S.. § 3402 and Federal Rules of Criminal Procedure 58(g)(2)(B), Parker appealed the magistrate's order of conviction to the district court. Upon request by the district court, Parker refiled his motion to dismiss, which was again denied.
[*4]

II.

On appeal, Parker contends his prosecution pursuant to the ACA violates his right to keep and bear arms under the Second Amendment. He also contends the United States lacks constitutional authority to charge him in federal court with violating a state gun control statute because the Tenth Amendment reserves the right to regulate arms to the states. As these are constitutional challenges to a statute, we apply de novo review. See United States v. Morris, 247 F.3d 1080, 1085 (10th Cir. 2001).

Assimilative Crimes Act

We begin by briefly reviewing the purpose and text of the ACA. [HN2] "The purpose of the ACA is to borrow state law to fill gaps in the federal criminal law that applies on federal enclaves." Untied States v. Adams, 140 F.3d 895, 896 (10th Cir. 1998). The ACA thus provides "a method of punishing a crime committed on government reservations in the way and to the extent that it would have been punishable if committed within the surrounding jurisdiction." Id. (internal quotation omitted). To achieve these ends, the ACA states:

> [HN3] (a) Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided [*5] in section 7 of this title . . . is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State . . . in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

18 U.S.C. § 13(a). Section 7 of Title 18 defines the special maritime and territorial jurisdiction of the United States as including:

> [HN4] (3) Any lands reserved or acquired for the use of the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

18 U.S.C. § 7. As applied here, the ACA enabled the federal government to charge Parker with a violation of Utah criminal law when that violation was committed on federal property.

Second Amendment

[HN5] "A well regulated Militia being necessary to the security of a [*6] free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amd. II. Whether a federal prosecution pursuant to the ACA for violating a state gun control statute violates an individual's Second Amendment rights is an issue of first impression.

Our analysis is guided by the Supreme Court's ruling in United States v. Miller, 307 U.S. 174, 83 L. Ed. 1206, 59 S. Ct. 816 (1939). In Miller, the defendants, unrestricted private citizens, were indicted for violating the National Firearms Act (Act), 26 U.S.C. § 1132(c)-(d) (1934) as a result of (1) transporting an unregistered double barrel 12-gauge shotgun in interstate commerce, and (2) not having in their possession a stamped written order permitting possession of the firearm. The defendants filed a motion to quash the indictment and alleged the Act was unconstitutional because it violated the Second Amendment. The district court agreed with the defendants and granted their motion. The Supreme Court reversed, holding:

> In the absence of any evidence tending to show that possession or use of a "shot gun having a barrel of less than eighteen inches in length" at this time [*7] has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not

> within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.

307 U.S. at 178. Miller has been interpreted by this court and other courts to hold that {HN6] the Second Amendment does not guarantee an individual the right to keep and transport a firearm where there is no evidence that possession of that firearm was related to the preservation or efficiency of a well-regulated militia. See Lewis v. United States, 445 U.S. 55, 65 n.8, 63 L. Ed. 2d 198, 100 S. Ct. 915 (1980) (citing Miller for proposition that "the Second Amendment guarantees no right to keep and bear a firearm that does not have some reasonable relationship to the preservation or efficiency or a well regulated militia") n2 see also Silveira v. Lockyer, 312 F.3d 1052, 1061 (9th Cir. 2003) referring to Miller's implicit rejection of traditional individual rights position); Love v. Pepersack, 47 F.3d 120, 124 (4th Cir. 1995) [*8] ("Since [Miller], the lower federal courts have uniformly held that the Second Amendment preserves a collective rather than individual, right."); United States v. Toner, 728 F.2d 115, 128 (2d cir. 1984) (interpreting Miller to stand for rule that, absent reasonable relationship to preservation of well-regulated militia, there is no fundamental right to possess firearm); United States v. Oakes, 564 F.2d 384, 387 (10th Cir. 1977) (analyzing Miller and concluding that "to apply the amendment so as to guarantee appellant's right to keep an unregistered firearm which has not been shown to have any connection to the militia, merely because he is technically a member of the Kansas militia would be unjustifiable in terms of either logic or policy"); but see United States v. Emerson, 270 F.3d 203, 226 (5th Cir. 2001) (reading Miller as indecisive and, at best, supporting an individual's right to bear arms).

n2 In Lewis, the Court held that laws which prohibit a felon from possession a firearm do not violate the Due Process Clause. Although the Court did not address the Second Amendment directly, it applied rational-basis scrutiny, noting the laws "are neither based upon constitutionally suspect criteria, nor do they trench upon any constitutionally protected liberties." 445 U.S. at 65 n.8.

[*9]

Drawing on Miller, we repeatedly have held that to prevail on a Second Amendment challenge, a party must show that possession of a firearm is in connection with participation in a "well-regulated" "state" "militia." See United States v. Haney, 264 F.3d 1161, 1165 (10th Cir. 2001) (holding "that a federal criminal gun-control law does not violate the Second Amendment unless it impairs the state's ability to maintain a well-regulated militia."); Oakes, 564 F.2df at 387 (stating "purpose of the second amendment . . . was to preserve the effectiveness and assure the continuation of the state militia"). [HN7] Applying this principle, in Haney we set out a four-part test a party must satisfy to establish a Second Amendment violation: "As a threshold matter, [a party] must show that (1) he is part of a state militia; (2) the militia, and his participation therein, is 'well regulated' by the state; (3) [guns of the type at issue- are used by that militia; and (4) his possession of the [the gun at issue] was reasonable connected to his militia service." 264 F.3d at 1165. See also United States v. Bayles, 310 F.3d 1302, 1307 (10th Cir. 2002) (applying Haney to find law banning sale of explosive devices does not infringe upon person's Second Amendment rights). Unless Parker can satisfy these four criteria, he cannot prevail on his Second Amendment claim. Notably,

Parker has presented no evidence tending to show that he meets any of the Haney criteria.

Although our prior opinion in Haney would guide us to an affirmance of Parker's conviction, he urges us to reverse the district court and adopt the reasoning found in United States v. Emerson, 270 F.3d 203 (5th Cir. 2001). In Emerson, the court concluded that the Second Amendment confers an individual right to bear arms, apart from any connection to a state-run militia. n3 The court held that the Second Amendment "protects the right of individuals, including those not then actually a member of any militia or engaged in active military service or training, to privately possess and bear their own firearms." 270 F.3d at 260. [*11] The Emerson court reached this conclusion by reading Miller narrowly and concluding Miller did not hold that the Second Amendment only protects the right to bear arms in the context of a militia. The court concluded that "the Second Amendment protects the right of individuals to privately keep and bear their own firearms that are suitable as individual, personal weapons and are not of the general kind or type excluded by Miller, regardless of whether the particular individual is then actually a member of a militia." 270 F.3d at 264.

> n3 In addressing the scope of the Second Amendment, the Emerson court agreed with the district court that the Second Amendment provides and *individual right* as opposed to a pure collective right to bear arms. The court ultimately reversed the district court because it concluded that, even though the defendant had an individual right to bear arms, that right reasonably could be limited where a restraining order had been entered against him for threats of domestic violence. Beyond this distinction,

> however, it is a mistake to read the decision, as Parker states, as "reversing" the district court on the Second Amendment interpretation because the courts agreed on Parker's central point - that the Second Amendment should be read as conferring *individual* rights. Therefore, for the purposes of considering Parker's claim, we focus upon the Fifth Circuit's more comprehensive discussion in lieu of that provided by the district court.

[*12]

We conclude Parker's reliance on Emerson is unavailing for several reasons. First, we cannot rely on a ruling from another circuit when this court has ruled to the contrary. Parker's reliance on Emerson is foreclosed by this court's rulings in Bayles, Graham, and Haney, where we held that absent a showing that a person is part of a well-regulated state-run militia, the Second Amendment does not establish a citizen's right to possess a firearm. Second, the Fifth Circuit stands alone in its interpretation of the Second Amendment as conferring an individual right to bear arms. In contrast, the Fourth, Sixth, Seventh, and Ninth Circuits have adopted the most restrictive interpretation (also known as "the collective rights model") of the Second Amendment. Under "the collective rights model," the Second Amendment never applies to individuals but merely recognizes the state's right to arm its militia. See Gillespie v. City of Indianapolis, 185 F.3d 693 (7th Cir. 1999); Hickman v. Block, 81 F.3d 98 (9th Cir. 1996); Love, 47 F.3d 120; United States v, Warin, 530 F.2d 103 (6th Cir. 1976); see also United States v. Price, 328 F.3d 958, 961 (7th Cir. 2003) [*13] (rejecting reasoning adopted in Emerson). Similarly, in addition to this court, the First, Third, Eighth, and Eleventh Circuits have all adopted a "sophisticated collective rights model." Under this interpretation of the Second Amendment, an individual has a

right to bear arms, but only in direct affiliation with a well-organized state-supported militia. See United States v. Wright, 117 F.3d 1265 (11th Cir. 1997); United States v. Rybar, 103 F.3d 273 (3d Cir. 1996); United States v. Hale, 978 F.2d 1016 (8th Cir. 1992); Cases v. United States, 131 F.2d 916 (1st Cir. 1942).

Third, putting aside the fact that Miller requires that a party have some connection to a state-run militia, even the Fifth Circuit's most narrow interpretation of Miller does not support Parker's claim. To the extent Miller only stands for the rule that a sawed-off shotgun is not a military firearm and therefore not covered by the Second Amendment, Parker has presented no evidence that his revolver would come within the category of arms used by the military. To the contrary, at trial, Officer Michael Palhegyi, who was part of the [*14] military police unit that took Parker into custody, testified that Parker's firearm was "not considered a military grade weapon" and, instead, more commonly was used for personal defense or target practice. App. at 30. We conclude Parker's prosecution by the United States pursuant to the ACA did not violate the Second Amendment.

Tenth Amendment

We do not reach the merits of Parker's argument that his federal prosecution violated the Tenth Amendment because we conclude sua sponte that Parker lacks standing as a private citizen to pursue this claim. See Rector v. City & County of Denver, 348 F.3d 935, 942 (10th Cir. 2003) ("Standing . . . raises jurisdictional questions and we are required to consider the issue sua sponte to ensure that there is an Article III case or controversy before us.").

In Mountain State Legal Foundation v. Costle, 630 F.2d 754, 761 (10th Cir. 1980), [HN8] we held that private plaintiffs do not have standing to bring Tenth Amendment claims when their interests are not aligned with the state's interests. n4 In Costle, the EPA Administrator determined that Colorado was not complying with federal environmental law. The state [*15] legislators challenged the decision on various constitutional and statutory grounds, but the Colorado Attorney General filed a brief in opposition. We concluded that "hence, the one party with clear standing to raise the constitutional arguments . . . not only declined to make those arguments but expressly rejected them." Id. As such, we determined that the case presented no justiciable case or controversy with regard to the constitutional arguments and dismissed the Tenth Amendment claim, stating [HN9] "only the State has standing to press claims aimed at protecting its sovereign powers under the Tenth Amendment. Id.

n4 There is presently a split among circuits on the question of whether the Tenth Amendment provides private citizens with standing. Compare Gillespie, 185 F.3d 693 (allowing a private plaintiff to present a Tenth Amendment challenge), with Costle, 630 F. 2d at 761. The Supreme Court recently granted certiorari to address this conflict in Pierce County v. Guillen, 537 U.S. 129, 154 L. Ed. 2d 610, 123 S. Ct. 720 (2003), but then declined to address the issue and resolved the case on other grounds. Because neither side has argued the issue of standing here and we find no Supreme Court precedent directly to the contrary, we conclude that Costle controls our disposition of the issue.

[*16]

In this case, Parker challenges the authority of the federal government to prosecute him for violating a state gun control law. He argues his prosecution violates the Tent Amendment because it interferes with the state's Second Amendment powers. This argument is particularly unpersuasive in the present case because the federal prosecution seeks to enforce state law. Simply put, we would be hard pressed to conclude that Parkers is representing Utah's interests or that the Tenth Amendment is violated when the federal government acts to enforce a Utah law which is violated on a federal enclave. In light of this court's clear statement in Costle, we conclude that Parker lacks standing to bring his Tenth Amendment claim. See also Tennessee Elec. Power Co. v. TVA, 306 U.S. 118, 144, 83 L. Ed. 543, 59 S. Ct. 366 (1939) (noting where states had not objected to TVA system of supplying power, private companies, "absent the states or their officers, have no standing in this suit to raise any question under the [Tenth Amendment]").

We AFFIRM Parker's conviction, concluding the Second Amendment does not bar his prosecution under the ACA. We DISMISS with prejudice Parker's Tenth Amendment [*17] claim for lack of standing.

CONCUR BY: KELLY

CONCUR: KELLY. Circuit Judge, concurring.

With the exception of the Second Amendment discussion in Part II, I join the court's opinion. Concerning the Second Amendment, I would affirm the conviction by simply noting that the obvious purpose of this prosecution-restricting concealed weapons on a military base to identified

military personnel-is a reasonable restriction and thus does not contravene the Second Amendment. I write separately because I disagree with the analysis in the court's opinion and because neither the Supreme Court nor Tenth Circuit precedent relied upon by the this court adequately addresses the question asked and answered: "Whether a federal prosecution pursuant to the *ACA [Assimilative Crimes Act]* for violating a state gun control statute violates an individual's Second Amendment rights."

Mr. Parker was found guilty of violating Utah Code Ann. § 76-10-505, n1 as assimilated by 18 U.S.C. § 13(a). The State provision generally prohibits carrying a loaded firearm in or on a vehicle. n2 Although the Supreme Court has twice stated that the Second Amendment does not apply [*18] to States because it is solely a limitation on national power, Presser v. Illinois, 116 U.S. 252, 265, 29 L. Ed. 615, 6 S. Ct. 580 (1886); United States v. Cruikshank, 92 U.S. 542, 553, 23 L. Ed. 588 (1875); 2 Ronald D. Rotunda & John E. Nowak, Treatise on Constitutional Law-Substance and Procedure § 14.2 at 520 n.4 (3d ed. 1999); see also State v. Vlacil, 645 P.2d 677, 680 (Utah 1982) & id. at 681 n.1 (Oaks, J., concurring), the State provision in this case is being enforced on a federal enclave by the federal government. See Lewis v. United States, 523 U.S. 155, 160, 162, 140 L. Ed. 2d 271, 188 S. Ct. 1135 (1998) (discussing function and application of Assimilative Crimes Act).

n1 That section provides:

Carrying loaded firearm in vehicle, on street, or in prohibited are.

(1) Unless otherwise authorized by law, a person may not carry a loaded firearm:

(a) in or on a vehicle;
(b) on any public street; or
(c) in a posted prohibited area.

(2) A violation of this section is a class B misdemeanor.

Utah Code Ann. § 76-10-505. [*19]

n2 Mr. Parker did not declare a loaded .38 Colt double action six-shot revolver at the gate of the miliary installation and is was discovered in a random search. Although the firearm was at one time in police service, Mr. Parker contended at the trial that it was neither military grade nor current peace officer grade, but rather solely for personal self-defense and target practice. Aplt. App. at 30, 34.

In United States v. Miller, 307 U.S. 174, 83 L. Ed. 1206, 59 S. Ct. 816 (1939), the Supreme Court rejected a Second Amendment challenge to the National Firearms Act. The case involved a restricted firearm, specifically a double barrel twelve gauge shot gun having a barrel less than eighteen inches in length. In reversing the district court which found a Second Amendment violation as a matter of law, the Court held:

> In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the [*20] Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use

> could contribute to the common defense. Aymette v. State of Tennessee, 2 Humph., Tenn., 154, 158.

Miller, 307 U.S. at 178. In Lewis v. United States, 445 U.S. 55, 65, 63 L. Ed 2d 198, 100 S. Ct. 915 (1980), the Court held that the statute prohibiting a felon from possessing a firearm was not violative of due process, noting that the federal firearm regulatory restrictions "are neither based upon constitutionally suspect criteria, nor do they trench upon any constitutionally protected liberties." Id. at n.8. The Court cited Miler for the proposition that "the Second Amendment guarantees no right to keep and bear a firearm that does not have 'some reasonable relationship to the preservation or efficiency of a well regulated militia.'" Id. (quoting Miller, 307 U.S. at 178).

Although not required by the cases before them, courts, including the Tenth Circuit, have concluded based upon the above that the Second Amendment is a collective, [*21] rather than an individual right. See United States v. Graham, 305 F.3d 1094, 1106, 42 Fed. Appx. 339 (10th cir. 2002). Our first case interpreting Miller involved prosecution under 26 U.S.C. § 5861(d) for unlawful possession of an unregistered machine gun. United States v. Oakes, 564 F.2d 384, 385 (10th Cir. 1977). The court, despite the universal admonition to decide constitutional issues narrowly, first rejected an "absolute right to keep arms," and then rejected an argument based upon the defendant's apparent membership in a class of persons constituting the Kansas militia. Id. at 387. Even though the defendant might have technically been a member of the Kansas militia, he had not shown any connection between the restricted firearm and the militia. Id. United States v. Baer, 235 F.3d 561, 564 (10th Cir. 2000), involved a prosecution under 18 U.S.C. § 922(g)(1) & (k) for unlawful possession of a firearm by a felon (restricted person)

and of a firearm with an obliterated serial number (restricted firearm). The court stated that "the circuits have consistently upheld the constitutionality [*22] of federal weapons regulations . . . absent evidence that they in any way affect the maintenance of a well regulated militia." Id. Regardless of the fact that a machine gun might be useful in a well regulated militia, it is apparent that a felon would not be.

Beginning with United States v. Haney, 264 F.3d 1161 (10th Cir. 2001), the analysis in the Tenth Circuit became more structured. Haney involved prosecution under 18 U.S.C. § 922(o) for unlawful possession of a machine gun (restricted firearm). The court held that "a federal criminal gun-control law does not violate the Second Amendment unless it impairs the state's ability to maintain a well-regulated militia." Haney, 264 F.3d at 1165. The court then discussed why legally and factually, the defendant could not prevail. Because the federal gun-control statute had an exemption for possession under the authority of a State, the State's ability to maintain a well-regulated militia could not be impaired as a matter of law. Id. The court, in what was clearly dicta, then remarked on what factual showing a defendant need make to prove a Second Amendment violation: [*23]

> As a threshold matter, he must show that (1) he is part of a state militia; (2) the militia, and his participation therein, is "well regulated" by the state; (3) machine guns are used by that militia; and (4) his possession of the machine gun was reasonably connected to his militia service.

Id.; see also United States v. Crawley, 837 F.2d 291, 292 (7th Cir. 1988) (discussing dictum). The court (without any record support) speculated that a "well-regulated" militia is

one actively maintained and trained by the state. Haney, 264 F.3d at 1165-66. Our subsequent cases have applied this test, though not needed in the context of restricted persons or devices, to conclude that no Second Amendment violation occurred.

United States v. Graham, 305 F.3d 1094, 42 Fed. Appx. 339 (10th Cir. 2002), involved a prosecution under 18 U.S.C. § 842(a)(1) proscribing knowingly engaging in the business of dealing in explosive materials without a license, which, if one had a wild imagination, could be viewed as involving a restriction on a weapon. Id. at 1097, 1106. Almost as an afterthought, the defendant attempted [*24] to cobble together an argument that explosive devices have a common use in military training exercises, and therefore such devices are part of a right to participate in those exercises and to keep and bear arms. Id at 1106. The court correctly noted that even assuming a defense was stated, Second Amendment rights are subject to reasonable governmental restrictions. Id. The court's discussion regarding the Haney test is totally unnecessary to the holding. Likewise in United States v. Bayles, 310 F.3d 1302, 1307 (10th Cir. 2002), a prosecution under 18 U.S.C. § 922(g)(8) for possession of a firearm while subject to a domestic violence protective order, while the court noted gratuitously that evidence of the four-part Haney test was not offered, the bottom line was that the statute was a reasonable restriction that did not infringe Second Amendment rights. Regardless of the Haney test, defendant was a restricted person and could not possess a weapon.

All of these cases involved uniform, federal restrictions on various types of firearms or uniform, federal restrictions on the persons possessing such firearms. Whether [*25] the Second Amendment right is an individual right or a collective right has not been decided by the

Supreme Court-Miller did not define this aspect of the Second Amendment right, and we need not reach the issue here. See Printz v. United States, 521 U.S. 898, 938 n.1, 138 L. Ed. 2d 914, 117 S. Ct. 2365 (1997) (Thomas, J., concurring). Justice Thomas has acknowledged the "growing body of scholarly commentary" indicating that the Second Amendment right in an individual right, although he also notes contrary authority supporting a collective rights view. Id. at 928 n.2. Two circuits have examined this question exhaustively in light of this academic debate and reached contrary conclusions. Compare United States v. Emerson, 270 F.3d 203, 260 (5th cir. 2001) (individual right), cert. denied, 536 U.S. 907, 153 L. Ed. 2d 184, 122 S. Ct. 2362 (2002), with Silveira v. Lockyer, 312 F.3d 1052, 1086 (9th Cir. 2002) (collective right), cert. denied, 157 L. Ed. 2d 693, 124 S. Ct. 803 (2003). The Fifth Circuit's approach is deserving of serious consideration. The court reasoned that the preamble of the Second Amendment ("A well [*26] regulated Militia, being necessary to the security of a free State,") could not override the clear substantive guarantee of the Second Amendment ("the right of the people to keep and bear Arms, shall not be infringed.") Emerson, 270 F.3d at 233. Viewing the amendment against the historical background that existed at the time, it concluded that the people at large, from whom any militia would be formed, are guaranteed the right to keep and bear arms (and be conversant with their use) so as to facilitate the objective of the preamble. Id. at 234-36. Like this court, the Fifth Circuit recognized reasonable restrictions on the Second Amendment right are constitutional. This case also can be decided on that narrow basis-there is no need to dilute prematurely what many consider to be one of the most important amendments to the United States Constitution.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

UNITED STATES OF AMERICA, ORDER

Plaintiff

vs.

DALE PARKER, Case No. 2:03-CR-00139TC

Defendant.

For the reasons set forth during the May 21, 2003 hearing, Mr. Parker's Motion to Dismiss is DENIED. If Mr. Parker wishes to file a Motion for a Trial de Novo, he is instructed to do so within ten days of this Order. The government, in turn, is instructed to respond within ten days of Mr. Parker's filing.

SO ORDERED this 21 day of May, 2003.

BY THE COURT:

TENA CAMPBELL
United States District Judge

United States District Court
for the
District of Utah
May 22, 2003

* * CERTIFICATE OF SERVICE OF CLERK * *

2:03-cr-00139

And correct copies of the attached were either mailed, faxed or e-mailed by clerk to the following:

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
vs.	)	Case No. 2:03-cr-00139 TC
	)	
DALE PARKER,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE DAVID NUFFER

Transcript of Magnetically Recorded Hearing

Mindi Powers, RPR
041003MP

ALPHA COURT
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THE COURT: Good afternoon, we're convening in United States versus Dale Parker.

Are we ready to proceed?

MR. WHATCOTT: Yes, Your Honor.

MS. CORPORON: Yes, Your Honor.

THE COURT: Thank you. I need to tell you that I have had some calendaring challenges today and so it may be necessary for me to recess from time to time to handle another matter, depending on how long this trial goes. But I'll do my best to avoid those interruptions.

Does the government want to make an opening statement?

MR. WHATCOTT: The government waives opening, Your Honor.

THE COURT: Ms. Corporon, waive or reserve?

MS. CORPORON: We'll reserve, Your Honor.

THE COURT: Okay. Go ahead then. Your first witness.

MR. WHATCOTT: Thank you, Your Honor. The government calls Specialist Jessie Lynch.

THE COURT: Come up in front of the clerk, if you will, and take an oath.

JESSIE LYNCH

was duly sworn, was examined and

THE COURT: Well, indicating there's only three minutes of argument remaining in this case and that I've done the wrong thing by putting you at the end of the calendar - - I thought you might have some more testimony, Ms. Corporon. But if that's true, then let's go ahead and finish this off. I apologize for keeping you waiting.

MS. CORPORON: That's okay, Your Honor. To clarify the record, I guess, the prosecution had officially rested before we recessed. I do not have any evidence to present affirmatively (inaudible) and we rest.

THE COURT: Okay. And then do you want to argue it, Mr. Whatcott?

MR. WHATCOTT: Yes, Your Honor. As I mentioned, maybe three minutes.

In this case 76-10-505, it talks about carrying a loaded weapon in or on a vehicle. 76-10-502 defines when that weapon is loaded - - for the purpose of this chapter, it says if there's two things: If all chambers are full, it's loaded, or if only one action would expend a cartridge then it's loaded. This occurred, of course, within the maritime territorial jurisdiction of the United States under the (inaudible0) act. The offense has been proven, Your Honor.

THE COURT: Thank you. Ms. Corporon?

MS. CORPORON: Your Honor, first of all I would submit that there is a requirement that any violation of the code provision cited occur knowingly or intentionally. There is an absence of proof in this particular case that this defendant actually knew that he possessed the firearm and

that it was in his vehicle. In fact, I think the statement that appears in the record from him is, "I forgot" - - let me quote it exactly. "I forgot I had my revolver in my truck when I drove on the facility."

I think there has to be some kind of knowing and intentional conduct which hasn't been established here and that element is missing. Furthermore I would, again, reassert that this is a situation in which the prosecution of the defendant violates the Second Amendment of the United States Constitution and that this is a defendant who is not otherwise under any disability to possess this firearm. He has no prior convictions. He's not under a domestic violence order of any kind. He's not under the supervision of a court of any kind that prohibited him from having a firearm.

Further, this is not a military grade weapon or currently even a police grade weapon and it is the kind of weapon exclusively for the purpose of personal self-defense

and for target practice, which is the kind of weapon expressly protected by the Second Amendment.

We would also argue that there's no indication that there is any independent effort on his part to commitment any criminal violations. He didn't brandish it or threaten anyone of have any intent to commit any crime or any harm with it, it was just there. So it's purely a possessory offense.

And under all of those circumstances, Your Honor, I'd ask for a finding of not guilty.

THE COURT: Okay. Let me just ask you, Ms. Corporon. The statute itself doesn't require intent of knowledge. How do you read that in?

MS. CORPORON: I think that it has to be read in under requirements of due process. And since it's a state statute, I think under both federal and state requirements of due process. Otherwise, if I were wanting to, for example, harm another person and wanted to set them up for harm somehow for a criminal conviction, I would surreptitiously

sneak a loaded weapon into their possession, into their motor vehicle, and could even admit, after the fact, that they would have had no knowledge of it. And if the prosecution's position is that there's no requirement of intent or knowledge, and my hypothetical is before the Court, even if the proof were that they really didn't know and had actively been deceived, it would sustain a conviction that would be in violation of due process.

And I think that's there's just got to be some requirement on possessory offenses that requires some kind of knowledge that you knew or reasonably should have known that you possessed the item at that particular moment or your - - or the law simply permits people to be set up and taken advantage of and to be convicted of crimes that they're not really committing.

THE COURT: I understand your position. Do you have any case law under the statute indicating that knowledge or intent is required?

MS. CORPORON: None under that statute.

THE COURT: Okay. Mr. Whatcott, anything in rebuttal?

MR. WHATCOTT: Only, Your Honor, that the general (inaudible) sign of requirement is only a general intent. And the intent we're looking at here is to carry the weapon loaded in the vehicle. And by placing the weapon in the vehicle and forgetting about, as the accused admitted, it, I would submit that that requirement had been met.

THE COURT: I've already ruled on the Second Amendment argument, and I'm looking at the language of - - language of the statute and don't see any requirement of specific knowledge or intent, and so I'm going to rule against you, Ms. Corporon, on that as well.

I find the defendant guilty of the charge of violating 76-10-505 as assimilated by 18 U.S.C. Section 13. It's a class B misdemeanor.

Mr. Whatcott, what do you recommend for a fine in the case?

MR. WHATCOTT: Your Honor, the uniform fine is listed at 185. I would recommend that.

THE COURT: Okay. And then there's a $10 assessment on that as well, so a total of 195.

What do you recommend, Ms. Corporon?

MS. CORPORON: Your Honor, I would ask that this Court not impose a fine in this case. This is a situation where you have an individual who is truly a very law-abiding citizen, and I think - - I think the anguish created by any kind of a criminal conviction or suggestion that he's committed a crime is going to be far greater than the mental state that I think you've seen in most people who come before you. He's been adequately punished at this point.

And there's - - I'd submit there's nothing further that ought to be done.

THE COURT: Okay. The nature of this statute, I think, is that it prevents loaded guns in certain places that have specific and considerable dangers. And it so happened that the gun was located on the Dugway Proving Ground. But I believe that the gun was probably in violation of the law for some time, so long that the defendant forgot about it. I am going to impose a find of $90 and a $10 assessment for a total of $100.

Mr. Parker, you have the right to appeal my decision by filing a notice of appeal through your attorney within ten days with the clerk of the court.

And, Ms. Corporon, if you'll come up to the clerk, she'll give you information on how the defendant is to make the fine payment.

MS. CORPORON: Thank you.

THE COURT: Anything else, Mr. Whatcott?

MR. WHATCOTT: No, Your Honor.

THE COURT: Ms. Corporon?

MS. CORPORON: (No audible response.)

THE COURT: Thank you both very much. And I apologize for keeping you waiting.

(Whereupon, the hearing was concluded.)